Reserve Organization of America

Law Review 26124

NORTH DAKOTA: VETERANS' PREFERENCE

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RESERVE SERVICE LAW CENTER

Veterans' Preference:
North Dakota

EXECUTIVE SUMMARY

North Dakota gives qualified veterans hiring preference in public employment: 5 points for veterans and 10 for disabled veterans in competitive hiring, and priority in non-competitive hiring. Eligible spouses and unmarried surviving spouses can receive the same preference.

The Federal Veterans' Preference Act (VPA)

The Federal Veterans' Preference Act (VPA), as explained in Law Review 0721 (May 2007), gives certain veterans an advantage in securing federal civil service jobs. The VPA does not apply to state and local government employment, but most states have their own veterans' preference laws that apply to the state and its political subdivisions (counties, cities, school districts, and other units of local government).

North Dakota Public Employment Hiring Preference to Veterans[1]:

Chapter 37-19.1-01 – 1-05. Veterans' Preferences
https://law.justia.com/codes/north-dakota/title-37/chapter-37-19-1/

[1] 2024 North Dakota Century Code Title 37 Chapter 37-19.1-01, Definitions. 2024 North Dakota Century Code Title 37 Chapter 37-19.1-02, Public employment preference to veterans – Residency requirements. 2024 North Dakota Century Code Title 37 Chapter 37-19.1-03, Preference to be granted veterans' spouses. 2024 North Dakota Century Code Title 37 Chapter 37-19.1-04, Refusal to give preference – Retaliatory action or removal – Remedies – Procedures. 2024 North Dakota Century Code Title 37 Chapter 37-19.1-05, Private employment veterans' preference.

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North Dakota offers a hiring preference for Veterans in public employment. To be eligible, Veterans must meet the job qualification requirements and possess the physical and mental abilities to perform the duties of the position they apply for.

When a Veteran applies for a job that isn't being filled through a competitive hiring process, disabled Veterans receive first preference, followed by non-disabled Veterans, and then eligible Spouses or unmarried Surviving Spouses.

In competitive hiring situations, when a Veteran's eligible Spouse or Surviving Spouse applies for a position that's been filled through a competitive process, the hiring authority will apply a five-point (5% when not on a 100-point scale) advantage for a non-disabled Veteran or a ten-point (10% when not on a 100-point scale) advantage for a disabled Veteran. This preference is equivalent to what the Veteran would receive if they had applied for the position themselves.

All applicants must be U.S. citizens and meet one of the following requirements:

- Have served on active duty in the U.S. Armed Forces during a period of armed conflict, receiving the Armed Forces Expeditionary Medal or another campaign service medal and being discharged under honorable conditions.
- Have served on active duty in the U.S. Armed Forces for 180 days (excluding training) or for the entire duration of active duty, being discharged under honorable conditions.

Reserve component Service members who are currently serving or have been honorably discharged, veterans with a service-connected disability rating from the VA, unremarried Surviving Spouses of Service members who died while serving on active duty in the U.S. Armed Forces or due to a service-connected injury or cause, and spouses of disabled Veterans who are unable to take the position due to a 100% service-connected disability or individual unemployability are eligible for this hiring preference.

North Dakota has defined periods of conflict that determine the uniform period of service for periods of armed conflict. These periods include:

- World War I: July 28, 1914, through November 11, 1918
- World War II: December 7, 1941, through December 31, 1946
- Korean War: June 27, 1950, through January 31, 1955
- Vietnam War: August 5, 1964, through May 7, 1975
- Gulf War: August 2, 1990, through the date prescribed by a Presidential proclamation or law.
- Operation Desert Shield/Desert Storm: August 2, 1990, through April 6, 1991
- Operation Enduring Freedom/Freedom's Sentinel (OEF/OFS) (Afghanistan): September 11, 2001, through August 30, 2021
- Operation Iraqi Freedom/New Dawn (OIF/OND) (Iraq): September 11, 2001, through December 15, 2011
- Operation Inherent Resolve (OIR) (Islamic State): October 15, 2014, through the present day.

North Dakota private employers are authorized to have a Veterans' hiring preference for honorably discharged Veterans and their Spouses. This preference is not considered a violation of any equal employment opportunity law.

Q: The great majority of veterans are men. Does a veterans' preference law discriminate against women and violate the Equal Protection Clause of the Constitution's Fourteenth Amendment?

A: In 1979, the Supreme Court considered and rejected that argument, by a 7-2 vote. Even if the effect of a veterans' preference law is to benefit many more men than women, the purpose of the law is to benefit veterans, not to discriminate against women.[2]

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ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve 32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).[3]

ROA is more than a century old—on 10/2/1922 a group of veterans of "The Great War," as World War I was then known, founded our organization at a meeting in Washington's historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded "Great War." One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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[2] *See Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 276 (1979). *See generally* Law Review 24055 (December 2024).

[3] *See* https://crsreports.congress.gov/product/pdf/IF/IF10540/. These are the authorized figures as of 9/30/2022.

If you are now serving or have ever served in any one of our nation's eight[4] uniformed services, you are eligible for membership in ROA,[5] and a one-year membership only costs $20 or $450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at Reserve Organization of America - ROA or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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About the Author

Deng received his Juris Doctor from Baylor University School of Law and received his Bachelor of Science in Sociology, his Bachelor of Science in Criminal Justice, and his minor in Political Science, from Abilene Christian University. As a division-1 student-athlete, Deng played cornerback for the Abilene Christian University Football Team from 2015-19, and Pole Vaulted with the Abilene Christian University Track and Field Team in 2015.

[4] Congress recently established the United States Space Force as the eighth uniformed service.
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